

81
1/28/02
KF

MCC:JJT:mel:2001V00126

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
WILLIAMSPORT, PA

JAN 28 2002

JOHN CHARLES KENNEY,
Plaintiff

v.

JAKE MENDEZ;
JESUS "JESSE" GONZALEZ;
JAMES "JIMMY" SCARBOROUGH; and
KELLY M. KEISER,
Defendants

MARY E. D'ANDREA, CLERK
KF
Deputy Clerk

Civil No. 1:CV-00-2143
(McClure, J.)
(Blewitt, M.J.)

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR
MOTION FOR RELIEF FROM THE APRIL 13, 2001 ORDER**

Defendants have filed a motion requesting relief from Judge Rambo's April 13, 2001, Order so that the Bureau of Prisons may transfer plaintiff to an institution outside the Middle District of Pennsylvania which meets his security needs. Presently, through undersigned counsel, defendants file the instant brief in support of their motion.

I. Introduction and Procedural History

Kenney is an inmate at USP Allenwood. He initiated this action on December 12, 2000, under Bivens, alleging he was assaulted at USP Allenwood by Unit Manager Jesus Gonzalez and Correctional Officer James Scarborough on September 29, 1999. Kenney seeks monetary relief.

Because Kenney was simultaneously being prosecuted for an assault on defendant Gonzalez, resisting defendant Scarborough, and possessing a contraband weapon on September 29, 1999, and because jury selection had been scheduled, defendants filed a motion to stay the present action pending resolution of the criminal charges. The motion was granted by Judge Rambo on April 13, 2001. Paragraph 3 of Judge Rambo's order also directed that "plaintiff shall not be removed from this jurisdiction until the captioned action is terminated." (Order of April 13, 2001, ¶ 3.)

On June 4, 2001, a jury found Kenney guilty of the weapons charge, not guilty of resisting staff, and not guilty by reason of insanity of the assault charge. The criminal case against Kenney concluded with his sentencing on the weapons charge on November 20, 2001.

II. Statement of the Case

Kenney received an incident report on September 29, 1999, for Assaulting With Serious Injury in violation of Bureau of Prisons' policy. (See Exh. 1 ¶ 3 and p. 5.¹) The Discipline Hearing Officer ("DHO") at USP Allenwood found that Kenney had committed the prohibited act for which he was charged and sanctioned him to: loss of forty days of good conduct time; disciplinary segregation for sixty days; loss of commissary

¹This declaration was previously submitted to the Court on November 8, 2001, as Exhibit 1 to defendants' Brief in Opposition to Plaintiff's Motion for Preliminary Injunction.

privileges for 120 days; loss of phone privileges for 120 days; loss of visiting for 120 days; and a *disciplinary transfer*.

(Id.)

As noted above, on June 4, 2001, a federal jury found Kenney guilty of possession of a contraband weapon, and he was sentenced for this offense on November 20, 2001. He is currently confined to the Special Housing Unit at USP Allenwood pending re-classification. (See Exh. 1, p. 10.) Now that the federal sentence has been imposed, Kenney's disciplinary transfer can be effectuated once the Bureau of Prisons determines which federal facility is most suitable to house him.

II. Question Presented

Should the Bureau of Prisons be allowed to transfer plaintiff to an institution outside of the Middle District of Pennsylvania which meets his security needs?

Suggested answer in the affirmative.

III. Argument

Kenney is currently being held in the administrative detention section of the Special Housing Unit at USP Allenwood. (See Exh. 1, p. 10.) Kenney was found to have committed the prohibited act of Assaulting with Serious Injury and received the sanction of a disciplinary transfer. Now that his federal sentence has been imposed, he is in the Special Housing Unit pending his disciplinary transfer to an appropriate institution.

(See Exh. 1, ¶ 3.) However, the Bureau of Prisons cannot transfer him due to Judge Rambo's April 13, 2001, Order prohibiting his transfer from the Middle District of Pennsylvania. (Order of April 13, 2001, ¶ 3.)

It is unknown when or how long it will take for this action to conclude. Kenney's deposition was taken at USP Allenwood on December 21, 2001 and discovery has just ended. The deadline for the filing of dispositive motions is February 15, 2001. At this time, it is likely that defendants will be filing dispositive motions for the Court's consideration which will need to be briefed by the parties and submitted to the Magistrate Judge for his recommendations to the District Court. Therefore, it is unlikely that the present action will conclude anytime in the near future. Should the case proceed to trial, Kenney can be transferred back to the jurisdiction of the Court by the Bureau of Prisons. Should Judge Rambo's Order remain in force, Kenney will most likely continue to be housed in the Special Housing Unit. For these reasons, it is requested that paragraph 3 of the Court's April 13, 2001, Order be vacated.

V. Conclusion

Wherefore, defendants request relief from the April 13, 2001, Order so that the Bureau of Prisons may transfer plaintiff from the Middle District of Pennsylvania.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney



JOSEPH J. TERZ
Assistant U.S. Attorney
MICHELE E. LINCALIS
Paralegal Specialist
316 Federal Building
240 West Third Street
Williamsport, PA 17703

Date: January 28, 2001

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN CHARLES KENNEY,	:	
Plaintiff	:	
	:	
v.	:	Civil No. 1:CV-00-2143
	:	(Rambo, J.)
JAKE MENDEZ;	:	(Blewitt, M.J.)
JESUS "JESSE" GONZALEZ;	:	
JAMES "JIMMY" SCARBOROUGH; and	:	
KELLY M. KEISER,	:	
Defendants	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

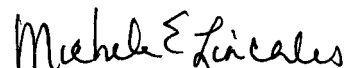
That this 28th day of January 2002, she served a copy of the attached

DEFENDANTS' BRIEF IN SUPPORT OF THEIR
MOTION FOR RELIEF FROM THE APRIL 13, 2001 ORDER

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Williamsport, Pennsylvania.

ADDRESSEE:

John Charles Kenney
Reg. No. 05238-041
U.S. Penitentiary
P.O. Box 3000
White Deer, PA 17887


MICHELE E. LINCALIS
Paralegal Specialist